Notice of Allowability	Application No.	Applicant(s)	
	10/722,840	HUANG ET AL.	
	Examiner	Art Unit	
	Margaret G. Moore	1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *the amendment filed 1/27/06*.

2. ☒ The allowed claim(s) is/are *1, 3, 4, 8 to 18, 22, 25, 26 and 30 to 37*.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
   (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

1. The following is an examiner's statement of reasons for allowance:

Upon reconsideration of the claims as amended and further review of the prior art, the Examiner cannot find a teaching or suggestion of a composition containing an aqueous emulsion of an amino functional silicone having the particle size range as claimed.

It is important to note that applicants are using the term "microemulsion" outside its normal meaning. See for instance the definition in Webster's dictionary, attached, which indicates that microemulsions generally have diameters of 50 - 500 angstroms. Also note the teachings in Estes on column 6, line 65 through column 7, which indicate that silicone microemulsions therein have a droplet diameter of less than .14 microns while silicone emulsions refer to emulsions having a droplet size of greater than .14 microns, as well as Berthiaume et al., which teaches on column 1, lines 25 to 30, that microemulsion have an average particle size of from about .001 to about .05 microns. The claimed particle range is *significantly* greater than that commonly associated with a microemulsion. Applicants claim a particle size range of from 10 to 100 microns. The Examiner stresses that, in this application, the silicone microemulsion therein *must* have amino functional silicone fluids dispersed in water wherein the amino functional silicone fluids have a droplet size of from 10 to 100 microns. The standard definition of micro-emulsion does not apply to these claims. It is this requirement, which is supported by the specification, that lends novelty to the instant claims. As an additional point, the Examiner notes that the claimed emulsion requires the presence of both a surfactant and a co-surfactant.

The prior art fails to teach or suggest a composition containing the required components and having the particle size range as claimed. None of the references applied against the claims previously provide a teaching or suggestion of such a particle size range.

Parkinson et al. teach an emulsion containing an amino functional silicone, surfactants and the claimed wetting agent but fail to teach or suggest any particle size range for the emulsion. The Examiner considered whether it would have been obvious for the skilled artisan to select a droplet particle size within the claimed range but the

totality of the prior art did not indicate that such a selection would have been obvious. See for instance Colurciello, Jr., which teaches on column 5, lines 40 and on, that small particle size droplets, less than about 2 microns, are beneficial. See Muntz et al. which teaches on column 4, lines 27 to 31, and column 4, line 65 through column 5, line 5, an emulsion particle size range of less than 1000 nm, preferably less than 450 nm. Also see Palcher, cited as prior art by Parkinson, which teaches that a small particle size of the silicone in the emulsion, usually less than about ½ micron, is beneficial. See the top of column 5.

Further demonstrating the particles sizes typical of microemulsion and emulsions is Hill et al., which teach silicone emulsion droplet sizes of .1 to 1 micron on column 1.

Merrifield et al. prepare a "microemulsion" of .025 micron and a "macroemulsion" of .2 to about .6 micron.

The Examiner considers each of these references to be analogous art to the instant claims and the teachings in Parkinson et al. Some clearly teach away from the particle size range as claimed. In addition to the specific teachings away, other prior art references prepare aqueous silicone emulsions *well* outside the claimed range. With this in mind, even *if* the Examiner were to have found a teaching of a particle size within the claimed range, at best it would have been obvious to try such a particle size in view of the references teaching away from or outside the claimed range. Obvious to try is not a proper standard of obviousness.

As such claims 1, 3, 4, 8 to 18, 22, 25, 26 and 30 to 37 are allowed.

2. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-

272-1090. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Margaret G. Moore
Primary Examiner
Art Unit 1712

mgm
4/7/06